

# **EXHIBIT 10**



## Transcript of Amber D. Compton

**Date:** December 16, 2016

**Case:** Corcoran, et al. -v- CVS Pharmacy, Inc.

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## Transcript of Amber D. Compton

Conducted on December 16, 2016

1 (1 to 4)

1	UNITED STATES DISTRICT COURT	1	UNITED STATES DISTRICT COURT
2	NORTHERN DISTRICT OF CALIFORNIA	2	NORTHERN DISTRICT OF CALIFORNIA
3		3	
4	CHRISTOPHER CORCORAN, et al., )	4	CHRISTOPHER CORCORAN, et al., )
5	Plaintiffs, )	5	Plaintiffs, )
6	vs. ) Case No.: )	6	vs. ) Case No.: )
7	CVS PHARMACY, INC., ) 3:15-cv-03504-YGR	7	CVS PHARMACY, INC., ) 3:15-cv-03504-YGR
8	Defendant. )	8	Defendant. )
9		9	
10		10	VIDEO-RECORDED DEPOSITION OF AMBER D. COMPTON,
11		11	produced, sworn and examined on December 16, 2016,
12		12	between the hours of nine o'clock in the forenoon
13		13	and noon of that day, at the offices of Bryan Cave
14	VIDEO-RECORDED DEPOSITION OF AMBER D. COMPTON	14	LLP, One Metropolitan Square, 211 North Broadway,
15	TAKEN ON BEHALF OF THE PLAINTIFFS	15	Suite 3600, St. Louis, Missouri 63102-2750, before
16	DECEMBER 16, 2016	16	William L. DeVries, a Certified Court Reporter (MO),
17		17	Certified Shorthand Reporter (IL), Registered
18		18	Diplomate Reporter, and Certified Realtime Reporter,
19		19	in a certain cause now pending in the United States
20	(Starting time of the deposition: 9:32 a.m.)	20	District Court, Northern District of California,
21		21	between CHRISTOPHER CORCORAN, et al., Plaintiffs,
22		22	vs. CVS PHARMACY, INC., Defendant; on behalf of the
23		23	Plaintiffs.
24		24	
25		25	
		2	
1	I N D E X	1	A P P E A R A N C E S
2	QUESTIONS BY:	2	For the Plaintiffs:
3	MR. GILMORE	3	Mr. Robert B. Gilmore
4	MS. MAINIGI	4	Stein Mitchell Cipollone Beato & Missner LLP
5	MR. SITARCHUK	5	1100 Connecticut Avenue, NW, Suite 1100
6	MR. GILMORE	6	Washington, D.C. 20036
7		7	(202) 601-1589
8		8	rgilmore@steinmitchell.com
9	E X H I B I T S	9	
10	EXHIBIT	10	For the Defendant:
11	Exhibit 613 Subpoena	11	Mr. Enu Mainigi
12	Exhibit 618 Declaration of Amber D.	12	Williams & Connolly LLP
13	Compton	13	725 Twelfth Street, N.W.
14	Exhibit 532 CVS/Express Scripts provider	14	Washington, D.C. 20005
15	contract	15	(202) 434-5000
16	Exhibit 617 2008 Express Scripts Network	16	emainigi@wc.com
17	Provider Manual	17	
18	Exhibit 615 2010 Express Scripts Network	18	For the Witness:
19	Provider Manual	19	Mr. Eric W. Sitarchuk
20	Exhibit 616 2016 Express Scripts Network	20	Morgan, Lewis & Bockius LLP
21	Provider Manual	21	1701 Market Street
22	Exhibit 619 August 10, 2016 complaint	22	Philadelphia, Pennsylvania 19103-2921
23		23	(215) 963-5000
24	(The exhibits were retained by the court reporter to	24	eric.sitarchuk@morganlewis.com
25	be attached to the original and copies of the	25	
	transcript.)		

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2 (5 to 8)

1 Also present:  
 2 Mr. John Niehaus, Videographer  
 3 Ms. Allison Stoll, Express Scripts

4  
 5  
 6  
 7  
 8 Court Reporter:  
 9 William L. DeVries, RDR/CRR  
 10 Missouri CCR #566  
 11 Illinois CSR #084-003893

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6  
 1 IT IS HEREBY STIPULATED AND AGREED by  
 2 and between counsel for the Plaintiffs and counsel  
 3 for the Defendant that this deposition may be taken  
 4 in shorthand by William L. DeVries, RDR/CRR, a  
 5 Certified Court Reporter and Certified Shorthand  
 6 Reporter, and afterwards transcribed into  
 7 typewriting; and the signature of the witness is  
 8 expressly waived.

9 \* \* \* \* \*

10 AMBER D. COMPTON,  
 11 of lawful age, produced, sworn and examined on  
 12 behalf of the Plaintiffs, deposes and says:  
 13 (Starting time of the deposition: 9:32 a.m.)  
 14 VIDEOGRAPHER: We're on the record.  
 15 This is the deposition of Amber D. Compton in the  
 16 matter of Christopher Corcoran, et al., versus  
 17 CVS Pharmacy, Inc., in the U.S. District Court for  
 18 the Northern District of California, Case Number  
 19 15-cv-3504-YGR.

20 Today's date is December 16th, 2016.  
 21 The time on the video monitor is 9:32 a.m. The  
 22 videographer today is John Niehaus representing  
 23 Planet Depos. This video deposition is taking place  
 24 at Bryan Cave in St. Louis, Missouri.

25 Will counsel please identify themselves

1 and whom they represent?  
 2 MR. GILMORE: Robert Gilmore with Stein  
 3 Mitchell on behalf of plaintiffs and the class.  
 4 MS. MAINIGI: Enu Mainigi from Williams  
 5 & Connolly for the defendants.

6 MS. STOLL: Allison Stoll for the  
 7 witness.

8 MR. SITARCHUK: Eric Sitarchuk for the  
 9 witness.

10 VIDEOGRAPHER: The court reporter today  
 11 is Bill DeVries representing Planet Depos. Would  
 12 the reporter please swear in the witness?

13 COURT REPORTER: Do you swear or affirm  
 14 that the testimony you are about to give in this  
 15 proceeding will be the truth, the whole truth, and  
 16 nothing but the truth?

17 A. THE WITNESS: Yes, I do.

18 EXAMINATION

19 QUESTIONS BY MR. GILMORE:

20 Q. Good morning, Ms. Compton.

21 A. Good morning.

22 Q. Could you please state your full name  
 23 for the record?

24 A. Sure. Amber Dawn Compton.

25 Q. What is your current home address?

8  
 1 A. 630 Willow Lake Court, Weldon Spring,  
 2 Missouri 63304.

3 Q. I'm going to hand you what we marked as  
 4 Plaintiffs' Exhibit 613.

5 (WHEREIN, Exhibit 613, Subpoena, was  
 6 marked for identification.)

7 Q. (By Mr. Gilmore) Plaintiffs'  
 8 Exhibit 613 is a subpoena for you to testify at this  
 9 deposition that was served and accepted by your  
 10 attorneys. You understand that you are testifying  
 11 today pursuant to this deposition subpoena?

12 A. Yes.

13 Q. Have you been deposed before?

14 A. No, I have not.

15 Q. Let me go over some ground rules for  
 16 what depositions involve. My job is to ask you  
 17 questions that you understand. Is that fair?

18 A. Yes.

19 Q. And your job is to answer my questions  
 20 to the best of your ability, okay?

21 A. Yes.

22 Q. It's important since this is being  
 23 transcribed that you give verbal answers rather than  
 24 head shakes or uh-huhs. Fair?

25 A. Yes.

## Transcript of Amber D. Compton

Conducted on December 16, 2016

5 (17 to 20)

	17		19
1	contract to prepare this declaration?	1	But you'll still answer the question to the best of
2	<b>A. I did not -- I didn't review it. I</b>	2	your ability.
3	<b>worked with Allison to --</b>	3	<b>A. I don't -- I don't have -- I have not</b>
4	MR. SITARCHUK: I'd instruct you not to	4	<b>had any conversations with anyone at Express Scripts</b>
5	answer beyond that.	5	<b>regarding these club or member programs. It's been</b>
6	<b>A. THE WITNESS: Okay.</b>	6	<b>our position that they were outside of the contract</b>
7	MR. SITARCHUK: Worked with Allison is	7	<b>that we would have held with CVS or that we do</b>
8	good enough.	8	<b>currently hold with CVS, and I wouldn't have engaged</b>
9	Q. (By Mr. Gilmore) So you yourself	9	<b>with others regarding the programs.</b>
10	haven't checked to confirm that the cited language	10	Q. If you haven't had conversations with
11	11 in the CVS/Express Scripts provider agreement is	11	anyone else at Express Scripts regarding these club
12	12 accurate?	12	member programs, how do you know it's our position,
13	<b>A. I'm familiar with the language that's</b>	13	13 as you said, Express Scripts' position versus just
14	<b>14 in there, yes, in their contract.</b>	14	14 your own?
15	Q. You didn't compare the cited language	15	MS. MAINIGI: Objection to form.
16	16 here with the contract itself in preparing this	16	<b>A. When the programs were introduced to</b>
17	17 declaration; is that right?	17	<b>17 the market they were a program that was created that</b>
18	<b>A. When I was reviewing the document for</b>	18	<b>18 was unique for a specific patient. Patient had to</b>
19	<b>19 the draft for the final declaration I was in</b>	19	<b>19 choose to participate in the program, and therefore</b>
20	<b>20 agreement with the language that was included.</b>	20	<b>20 we felt that our position that we took was this was</b>
21	Q. My question was a little different.	21	<b>21 outside of the usual and customary retail pricing.</b>
22	I'm just asking you, you didn't take a copy of the	22	Q. (By Mr. Gilmore) My question was a
23	23 contracts and compare the language with what's in	23	23 little different.
24	24 the declaration? You're relying on someone else; is	24	<b>A. Okay.</b>
25	25 that right?	25	Q. And I'll ask you questions about
	18		20
1	<b>A. Yes, I was relying on Allison.</b>	1	1 your -- your positions as you express them in the
2	Q. Sitting here today, are you aware of	2	2 declaration, but you've said a couple times that
3	3 anything that you would correct or say differently	3	3 these are our positions or we viewed this. And I'm
4	4 in this declaration?	4	4 just trying to understand what's your basis for
5	<b>A. No.</b>	5	5 saying that? How did you learn that Express Scripts
6	Q. You say you have no knowledge of anyone	6	6 as a company holds these positions that you're
7	7 else's thoughts on this, meaning the views that you	7	7 saying it holds?
8	8 express in this declaration. Why don't you have any	8	MS. MAINIGI: Objection to form.
9	9 knowledge of other people at Express Scripts	9	<b>A. It would be the area responsible --</b>
10	10 thoughts on what you say in this declaration?	10	<b>10 responsible for this contracting exercise with CVS</b>
11	MS. MAINIGI: Objection to form.	11	<b>11 and how we interpret the language would be my team.</b>
12	MR. SITARCHUK: Objection to form.	12	<b>12 So I collectively I guess used we as my -- my</b>
13	Q. (By Mr. Gilmore) You can answer.	13	<b>13 organization, my responsibility.</b>
14	<b>A. So I can answer. Okay. I'm sorry.</b>	14	Q. (By Mr. Gilmore) Do you know if your
15	Q. If -- if your attorney instructs you on	15	15 supervisors throughout the -- I guess going back to
16	16 privilege grounds not to answer, then that would be	16	16 say --
17	17 the only ground that you can't --	17	<b>A. Uh-huh.</b>
18	<b>A. Okay.</b>	18	Q. -- 2008 to the present, have they
19	Q. -- answer unless you don't understand	19	19 expressed views to you that match up with what
20	20 my question in --	20	20 you've set forth in this declaration about CVS's
21	<b>A. Okay.</b>	21	21 membership program, Health Savings Pass program?
22	Q. -- which case I'll try and rephrase it.	22	<b>A. If we would have had those</b>
23	Let me know.	23	<b>23 conversations if those discussions would have</b>
24	<b>A. Okay.</b>	24	<b>24 occurred, this is our -- this would have been the</b>
25	Q. But otherwise, they'll make objections.	25	<b>25 position that those predecessors along with myself</b>

## Transcript of Amber D. Compton

6 (21 to 24)

Conducted on December 16, 2016

	21		23
1 <b>would have had the same view.</b>	1	I am currently the vice president,	
2       Q. Did those conversations occur to your	2	retail strategy and contracting for	
3    recollection?	3	Express Scripts, Inc., Express Scripts,	
4 <b>A. We had awareness that these programs</b>	4	one of the largest pharmacy benefit	
5 <b>were in the marketplace. We did. There were --</b>	5	management, PBM, companies in the	
6 <b>there were ways through NACDS. There were ways</b>	6	United States.	
7 <b>through Drug Store News when a program was -- like</b>	7	Did I read that all correctly?	
8 <b>this type of program was launched, whether it was</b>	8	<b>A. Yes.</b>	
9 <b>CVS or whether it was anyone else.</b>	9	Q. Can you tell us what a PBM is?	
10 <b>So we had knowledge that the programs</b>	10	<b>A. Sure. It's an organization that's</b>	
11 <b>existed. We looked at the way the programs were</b>	11	<b>designed to work with a variety of plan sponsors to</b>	
12 <b>structured. To the extent that we felt they were</b>	12	<b>manage their pharmacy benefit.</b>	
13 <b>outside of the usual and customary pricing, our</b>	13	Q. As a PBM Express Scripts clients are	
14 <b>position, my position was they were outside of the</b>	14	what you call plan sponsors?	
15 <b>contract that I held with the said retailer.</b>	15	<b>A. Plan sponsors or clients.</b>	
16       Q. Again, my question is a little	16	Q. And these plan sponsors are insurance	
17    different, and I'll try and make myself clear.	17	companies, employee benefit plans, those kinds of	
18 <b>A. Okay.</b>	18	organizations?	
19       Q. I'm really asking do you recall	19	<b>A. Correct.</b>	
20    conversations, meetings, memos, something where you	20	Q. Are Express Scripts clients also the	
21    communicated to someone else or someone else	21	individuals insured under those plans?	
22    communicated to you within Express Scripts the views	22	<b>A. I'm sorry. Say it again.</b>	
23    that you express in your declaration?	23	Q. Do Express Scripts clients, do they	
24 <b>A. I mean, we -- I would have made a</b>	24	include individuals who are insured under the plans	
25 <b>business decision that these club or membership</b>	25	that the plan sponsors --	
	22		24
1 <b>programs were outside of our contract. So yes,</b>	1	<b>A. Yes.</b>	
2 <b>there would have been some discussion around the</b>	2	Q. -- have? Express Scripts contracts	
3 <b>program. The consensus was I felt these programs</b>	3	with pharmacies like CVS, right?	
4 <b>were exempt from our contract.</b>	4	<b>A. Correct.</b>	
5       Q. Did your supervisors need to approve	5	Q. And those contracts allow Express	
6    that decision, do you remember?	6	Scripts clients to use their member's insurance at	
7 <b>A. We would have, yes --</b>	7	CVS stores, fair?	
8       Q. Do --	8	<b>A. Correct.</b>	
9 <b>A. -- from a business perspective.</b>	9	Q. How is Express Scripts paid generally	
10      Q. Do you recall a specific meeting or --	10	speaking for performing its PBM business with	
11 <b>A. I do not recall.</b>	11	respect to transactions at a pharmacy like CVS?	
12      Q. Okay. Or any specific action that your	12	<b>A. We -- from the pharmacy perspective?</b>	
13    supervisors and you took where they said, yes,	13	Q. Yes.	
14    Amber, you're right, I agree with your position?	14	<b>A. We have a variety of networks that CVS,</b>	
15 <b>A. I don't recall.</b>	15	<b>for example, would contract with and participate in,</b>	
16      MR. SITARCHUK: And Amber, make sure to	16	<b>16 and the reimbursement is negotiated between the two</b>	
17    wait for Rob to finish his question before you	17	<b>17 parties.</b>	
18    answer.	18	Q. And then, generally speaking, how is	
19 <b>A. THE WITNESS: Okay.</b>	19	Express Scripts paid by its clients?	
20      MR. GILMORE: That was a little bit of	20	<b>A. I've -- I've not spent time on the</b>	
21    a long question.	21	<b>client side, so I don't have -- wouldn't be able to</b>	
22      MR. SITARCHUK: And he paused a little	22	<b>answer that.</b>	
23    bit, so ...	23	Q. I think I heard you say that there are	
24      Q. (By Mr. Gilmore) In your declaration	24	two parts in terms of how CVS pays Express Scripts.	
25    in paragraph one you say (quote as read):	25	By joining an Express Scripts network and then	
	21		23
1 <b>would have had the same view.</b>	1	I am currently the vice president,	
2       Q. Did those conversations occur to your	2	retail strategy and contracting for	
3    recollection?	3	Express Scripts, Inc., Express Scripts,	
4 <b>A. We had awareness that these programs</b>	4	one of the largest pharmacy benefit	
5 <b>were in the marketplace. We did. There were --</b>	5	management, PBM, companies in the	
6 <b>there were ways through NACDS. There were ways</b>	6	United States.	
7 <b>through Drug Store News when a program was -- like</b>	7	Did I read that all correctly?	
8 <b>this type of program was launched, whether it was</b>	8	<b>A. Yes.</b>	
9 <b>CVS or whether it was anyone else.</b>	9	Q. Can you tell us what a PBM is?	
10 <b>So we had knowledge that the programs</b>	10	<b>A. Sure. It's an organization that's</b>	
11 <b>existed. We looked at the way the programs were</b>	11	<b>designed to work with a variety of plan sponsors to</b>	
12 <b>structured. To the extent that we felt they were</b>	12	<b>manage their pharmacy benefit.</b>	
13 <b>outside of the usual and customary pricing, our</b>	13	Q. As a PBM Express Scripts clients are	
14 <b>position, my position was they were outside of the</b>	14	what you call plan sponsors?	
15 <b>contract that I held with the said retailer.</b>	15	<b>A. Plan sponsors or clients.</b>	
16       Q. Again, my question is a little	16	Q. And these plan sponsors are insurance	
17    different, and I'll try and make myself clear.	17	companies, employee benefit plans, those kinds of	
18 <b>A. Okay.</b>	18	organizations?	
19       Q. I'm really asking do you recall	19	<b>A. Correct.</b>	
20    conversations, meetings, memos, something where you	20	Q. Are Express Scripts clients also the	
21    communicated to someone else or someone else	21	individuals insured under those plans?	
22    communicated to you within Express Scripts the views	22	<b>A. I'm sorry. Say it again.</b>	
23    that you express in your declaration?	23	Q. Do Express Scripts clients, do they	
24 <b>A. I mean, we -- I would have made a</b>	24	include individuals who are insured under the plans	
25 <b>business decision that these club or membership</b>	25	that the plan sponsors --	
	22		24
1 <b>programs were outside of our contract. So yes,</b>	1	<b>A. Yes.</b>	
2 <b>there would have been some discussion around the</b>	2	Q. -- have? Express Scripts contracts	
3 <b>program. The consensus was I felt these programs</b>	3	with pharmacies like CVS, right?	
4 <b>were exempt from our contract.</b>	4	<b>A. Correct.</b>	
5       Q. Did your supervisors need to approve	5	Q. And those contracts allow Express	
6    that decision, do you remember?	6	Scripts clients to use their member's insurance at	
7 <b>A. We would have, yes --</b>	7	CVS stores, fair?	
8       Q. Do --	8	<b>A. Correct.</b>	
9 <b>A. -- from a business perspective.</b>	9	Q. How is Express Scripts paid generally	
10      Q. Do you recall a specific meeting or --	10	speaking for performing its PBM business with	
11 <b>A. I do not recall.</b>	11	respect to transactions at a pharmacy like CVS?	
12      Q. Okay. Or any specific action that your	12	<b>A. We -- from the pharmacy perspective?</b>	
13    supervisors and you took where they said, yes,	13	Q. Yes.	
14    Amber, you're right, I agree with your position?	14	<b>A. We have a variety of networks that CVS,</b>	
15 <b>A. I don't recall.</b>	15	<b>for example, would contract with and participate in,</b>	
16      MR. SITARCHUK: And Amber, make sure to	16	<b>16 and the reimbursement is negotiated between the two</b>	
17    wait for Rob to finish his question before you	17	<b>17 parties.</b>	
18    answer.	18	Q. And then, generally speaking, how is	
19 <b>A. THE WITNESS: Okay.</b>	19	Express Scripts paid by its clients?	
20      MR. GILMORE: That was a little bit of	20	<b>A. I've -- I've not spent time on the</b>	
21    a long question.	21	<b>client side, so I don't have -- wouldn't be able to</b>	
22      MR. SITARCHUK: And he paused a little	22	<b>answer that.</b>	
23    bit, so ...	23	Q. I think I heard you say that there are	
24      Q. (By Mr. Gilmore) In your declaration	24	two parts in terms of how CVS pays Express Scripts.	
25    in paragraph one you say (quote as read):	25	By joining an Express Scripts network and then	

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13 (49 to 52)

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<p>1 way the programs were presented and how they were 2 constructed.</p> <p>3 Q. (By Mr. Gilmore) The third sentence of 4 paragraph ten of your declaration reads (quote as 5 read):</p> <p>6 The prices offered under legitimate 7 membership programs, i.e. prices not 8 offered to all of a given pharmacy's 9 customers, are generally not included 10 in the pharmacy's usual and customary 11 price under the Express Scripts, Inc. 12 pharmacy provider agreement. 13 Did I read all that correctly?</p> <p>14 A. Yes, you did.</p> <p>15 Q. You used the phrase legitimate 16 membership programs, right?</p> <p>17 A. Uh-huh.</p> <p>18 MR. SITARCHUK: You got to say yes or 19 no.</p> <p>20 A. Yes.</p> <p>21 Q. (By Mr. Gilmore) What makes a 22 membership program legitimate versus not legitimate?</p> <p>23 A. The -- the term I -- I feel I used that 24 term for as these programs were being introduced to 25 the -- to the public, being put on a press release,</p>	<p>49</p> <p>1 that would make the program not a legitimate 2 membership program?</p> <p>3 MR. SITARCHUK: Objection to form.</p> <p>4 MS. MAINIGI: Objection to form.</p> <p>5 Q. (By Mr. Gilmore) Fair?</p> <p>6 MR. SITARCHUK: Objection to form.</p> <p>7 MS. MAINIGI: Join.</p> <p>8 A. I don't think it would be a program.</p> <p>9 MR. SITARCHUK: We've been going for an 10 hour. Let's take a break.</p> <p>11 MR. GILMORE: Sure.</p> <p>12 VIDEOGRAPHER: We're going off the 13 record at approximately 10:30 a.m.</p> <p>14 (WHEREIN, a recess was taken.)</p> <p>15 VIDEOGRAPHER: We're back on the record 16 at approximately 10:42 a.m.</p> <p>17 Q. (By Mr. Gilmore) Ms. Compton, we're 18 still looking at paragraph ten in your declaration, 19 Plaintiffs' Exhibit 618. The third sentence which 20 we read before says (quote as read):</p> <p>21 Prices offered under legitimate 22 membership programs, i.e. prices not 23 offered to all of a given pharmacy's 24 customers, are generally not included 25 in the pharmacy's usual and customary</p>
<p>1 offered at the point of sale at the counter for the 2 customers, that these were valid and true membership 3 programs.</p> <p>4 Q. In other words, a membership program 5 wouldn't be legitimate or valid and true if those 6 prices are offered to people not in the program?</p> <p>7 MS. MAINIGI: Objection to form.</p> <p>8 A. I don't know all of the details of the 9 programs, so again, if the customer chose to 10 participate in the program, it's up to them to 11 understand what -- what the program consists of and 12 what benefits they'll get from that program.</p> <p>13 Q. (By Mr. Gilmore) Is what makes the 14 program, these membership programs you're talking 15 about a legitimate program that the only way you get 16 these prices is if you have enrolled in the program 17 and paid the fee?</p> <p>18 MR. SITARCHUK: Objection to form.</p> <p>19 MS. MAINIGI: Join.</p> <p>20 A. Generally if you've enrolled in the 21 program, yes, you've made a decision to enroll in 22 the program.</p> <p>23 Q. (By Mr. Gilmore) And so if as a 24 customer you could get these prices from CVS even if 25 you hadn't enrolled in the program and paid the fee,</p>	<p>50</p> <p>1 price under the Express Scripts, Inc. 2 pharmacy provider agreement.</p> <p>3 I want to ask you about that word 4 generally. Does that indicate that sometimes 5 membership program prices are included in the 6 pharmacy's usual and customary price under the 7 Express -- Express Scripts agreement?</p> <p>8 A. No, U&amp;C is a defined term. So it's 9 pursuant to -- the U&amp;C definition will be pursuant 10 to the contract negotiation.</p> <p>11 Q. Could you delete generally and replace 12 it with never or -- I'm sorry.</p> <p>13 Could you delete generally not and 14 replace it with never?</p> <p>15 MR. SITARCHUK: Never not.</p> <p>16 MS. MAINIGI: Objection.</p> <p>17 MR. SITARCHUK: Sure that works? I'll 18 object to form.</p> <p>19 Q. (By Mr. Gilmore) Let me ask it a 20 different way. What I'm trying to get at is I see 21 the qualifier generally. When I see that, to me 22 that means that most of the time membership program 23 prices are not included in the pharmacy's usual and 24 customary price under Express Scripts agreements, 25 but sometimes they may be. Is that true, what I</p>

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## Transcript of Amber D. Compton

14 (53 to 56)

Conducted on December 16, 2016

	53		55
1 just said?		1 price, fair?	
2 MS. MAINIGI: Objection.		2 MS. MAINIGI: Objection.	
3 <b>A. No. I don't have any membership -- any</b>		3 <b>A. That is fair. I can't point to</b>	
4 <b>contractual agreement where a membership program</b>		4 <b>anything.</b>	
5 <b>would be included in the definition of usual and</b>		5 (By Mr. Gilmore) Nor can you point us	
6 <b>customary.</b>		6 to any written communication occurring at the time	
7 Q. (By Mr. Gilmore) Let's turn to		7 that says, from Express Scripts to CVS, Express	
8 paragraph eleven in your declaration. You say		8 Scripts knows you're not submitting this as the	
9 (quote as read):		9 usual and customary price and Express Scripts agrees	
10 In my experience, there was general		10 with that? You can't point us to any document that	
11 awareness in the marketplace that		11 says that, right?	
12 pharmacies with a membership program		12 MS. MAINIGI: Objection.	
13 were not reporting the membership		13 <b>A. That's correct.</b>	
14 program prices as usual and customary		14 Q. (By Mr. Gilmore) Turn to paragraph 17	
15 prices.		15 of your declaration. You say (quote as read):	
16 What's your basis to say there was		16 I was aware that CVS was not submitting	
17 general awareness?		17 to Express Scripts the membership	
18 <b>A. The -- the programs were public</b>		18 program prices as CVS's U&C price on	
19 <b>programs. They were available knowledge wise</b>		19 prescription drug claims.	
20 <b>through the press releases that we've discussed, and</b>		20 Did I read that correctly?	
21 <b>my understanding, my position is that like Express</b>		21 <b>A. You did, yes.</b>	
22 <b>Scripts they were generally excluded from usual and</b>		22 Q. How did you become aware of that?	
23 <b>customary prices. General understanding. Again, I</b>		23 <b>A. Again, we -- I viewed the membership</b>	
24 <b>don't have detailed knowledge. It's just a general</b>		24 <b>program as being outside of the Express Scripts CVS</b>	
25 <b>statement.</b>		25 <b>contract. Wouldn't have expected them to be part of</b>	
	54		56
1 Q. Did you talk with employees at other		1 <b>the contract or claims adjudication to Express</b>	
2 PBMs in which those employees at other companies		2 <b>Scripts.</b>	
3 said they also were -- knew that pharmacies were not		3 Q. Putting aside that you didn't expect	
4 submitting these membership program prices as usual		4 CVS to submit these prices, what did you do or learn	
5 and customary prices?		5 to in fact know that CVS was not submitting to	
6 <b>A. No, I would --</b>		6 Express Scripts the membership prices as CVS's usual	
7 MS. MAINIGI: Objection.		7 and customary prices?	
8 <b>A. I would have not spoken with other PBMs</b>		8 MR. SITARCHUK: Objection to form.	
9 <b>regarding this or any contract term.</b>		9 MS. MAINIGI: Join.	
10 Q. (By Mr. Gilmore) Do you recall any		10 <b>A. I'm not sure I understand what you're</b>	
11 communication to you from someone at CVS saying		11 asking.	
12 something to the effect of, Amber, CVS is not going		12 Q. (By Mr. Gilmore) So I heard you say	
13 to submit its Health Savings Pass prices at its		13 that you didn't expect CVS to submit the HSP prices	
14 usual and customary prices?		14 at CVS's usual and customary prices. In paragraph	
15 <b>A. No, I do not recall that conversation</b>		15 17 you say you were aware that CVS was not doing	
16 <b>or a conversation.</b>		16 that. I'm just trying to understand what you did to	
17 Q. Are you aware of anyone at CVS having		17 get that knowledge? Did you look at data? Did you	
18 that kind of conversation with anyone else besides		18 look at some kind of communication, some -- any	
19 you at Express Scripts?		19 information or something that would in fact confirm	
20 <b>A. I'm not, no.</b>		20 for you at the time CVS is not submitting these	
21 Q. And you can't point us to a letter or		21 prices as its usual and customary prices?	
22 e-mail or any other written communication between		22 <b>A. Well, pursuant to the contract U -- U&amp;C</b>	
23 anyone at Express Scripts and anyone at CVS		23 <b>is a defined term within our contract. I had taken</b>	
24 reflecting that CVS is not going to submit its		24 <b>a position that these programs were outside of their</b>	
25 Health Savings Pass price as its usual and customary		25 <b>usual and customary pricing and wouldn't be subject</b>	

## Transcript of Amber D. Compton

24 (93 to 96)

Conducted on December 16, 2016

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1       **A. No.**2       Q. So do you have any knowledge of what  
3       was said to Medicare or TRICARE -- Medicare part D  
4       or TRICARE either way?5       **A. No.**

6       MR. SITARCHUK: That's all I have.

7       Thank you.

8       FURTHER EXAMINATION

9       QUESTIONS BY MR. GILMORE:

10       Q. Are you aware of the existence of any  
11       investigations of Express Scripts by Medicare part D  
12       or TRICARE or any other government agency relating  
13       to usual and customary pricing?14       MR. SITARCHUK: And I'd object and  
15       instruct you not to answer to the extent if any that  
16       would call for communications with counsel, but if  
17       you have any awareness other than that, please  
18       answer the question.19       **A. No, I don't have any awareness.**20       Q. (By Mr. Gilmore) Are you aware of any  
21       litigation that Express Scripts has been involved in  
22       regarding the usual and customary pricing that  
23       pharmacies submit?

24       MR. SITARCHUK: Same instruction.

25       **A. No, not aware.**

1       CERTIFICATE OF REPORTER

2  
3       I, William L. DeVries, a Certified  
4       Court Reporter (MO), Certified Shorthand Reporter  
5       (IL), Registered Diplomate Reporter, and a Certified  
6       Realtime Reporter, do hereby certify that the  
7       witness whose testimony appears in the foregoing  
8       deposition was duly sworn by me pursuant to Section  
9       492.010 RSMo; that the testimony of said witness was  
10       taken by me to the best of my ability and thereafter  
11       reduced to typewriting under my direction; that review  
12       was not requested; that I am neither counsel for, related  
13       to, nor employed by any of the parties to the action  
14       in which this deposition was taken, and further that I  
15       am not a relative or employee of any attorney or counsel  
16       employed by the parties thereto, nor financially or  
17       otherwise interested in the outcome of the action.

18

19

20       *William L. DeVries*21       Certified Court Reporter  
22       within and for the State of Missouri

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94

1       Q. (By Mr. Gilmore) Are you aware of any  
2       litigation that Express Scripts has been involved in  
3       regarding pharmacies' discount membership programs?

4       MR. SITARCHUK: Same instruction.

5       **A. No, not aware.**

6       MR. GILMORE: No further questions.

7       MS. MAINIGI: Nothing for me. Thank  
8       you.

9       MR. SITARCHUK: We're done.

10       VIDEOGRAPHER: We're going off the  
11       record at approximately 11:41 a.m.12       (WHEREIN, the deposition was concluded  
13       at 11:41 a.m.)

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